

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN J. PETITIO,

Plaintiff,

-against-

OPINION & ORDER
CV-04-4493(SJF)(ARL)

PHILLIP D. HILL, IRS Special Agent CID,
RANDALL L. SPRANCE, IRS Special Agent CID,
LOU GOSSETT, IRS CID Supervisor,
DAVID MASSECCA, Ex-IRS Revenue Agent/Auditor,
MELINDA G. WILLIAM, ESQ., IRS Attorney,
RONALD BUCH, ESQ., IRS Attorney,
RICHARD GOLDMAN, ESQ., IRS Attorney,
STEPHEN KING, ESQ., Assistant U.S. Attorney
THERESA G. MCQUEENEY, ESQ., IRS Attorney,
LEWIS J. ABRAHAMS, ESQ., IRS Associate Area Counsel,
RICHARD W. SKILLMAN, ESQ., IRS Acting Chief Counsel,
KEVIN M. BROWN, IRS Division Counsel,
LINDA R. DETTERY, IRS Area Counsel,
PEGGY GARTENBAUM, IRS Acting Associate Area Counsel,
MONICA E. KOCH, ESQ., IRS Attorney,
STUART BROWN, ESQ., IRS Chief Counsel,
ANDREW J. MANDELL, IRS Acting Assistant Chief Counsel,
JOHN WILLIAMS, JR., IRS Chief Counsel,
JOSEPH F. MASELLI, IRS Regional Counsel,
JODY TANCER, IRS Acting District Counsel,
JOHN ASHCROFT, former U.S. Attorney General
ROSLYNN R. MAUSKOPF, U.S. Attorney of E.D.N.Y.,
JANET RENO, former U.S. Attorney General,
JOHN W. SNOW, Secretary of the Treasury,
PAUL H. O'NEILL, former Secretary of the Treasury,
LAWRENCE H. SUMMERS, former Secretary of the Treasury,
ROBERT E. RUBIN, former Secretary of the Treasury,
MARK W. EVERSON, Commissioner of IRS,
CHARLES O. ROSSOTTI, former Commissioner of IRS,
INTERNAL REVENUE SERVICE,
UNITED STATES DEPARTMENT OF TREASURY,
UNITED STATES DEPARTMENT OF JUSTICE,
OFFICE OF THE UNITED STATES ATTORNEY GENERAL,
OFFICE OF THE UNITED STATES ATTORNEY GENERAL
EASTERN DISTRICT OF NEW YORK, and
UNITED STATES OF AMERICA,

Defendants.

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JOHN J. PETITIO, an individual, and
DOES 1-500 WORKING INTEREST WELL OWNERS,
DOES 1-800 WYOMING-BOG HORN WI OWNERS, and
Does 1-5000 ENERGYTEC INC., STOCKHOLDERS,

Plaintiffs,

-against-

ERIC A. BREWSTER, THOMAS BENJAMIN,
SPRADLIN BILLIE CHARLES, METGHALCHI MASSOUD,
DON L. LAMBERT, DOROTHEA WESTBROOK KREMPEIN,
PAUL J. WILLINGHAM, GENE ROSS BESEN,
JEFFREY M. TILLOTSON, MARGARET NIVER MCGANN,
RICHARD A. SMITH, ERIK A. CHRISTIANSEN,
MARK LEHMAN, PARSONS BEHLE & LATIMER,
FLORA BERRY, RICHARD STAATS, and
ENERGYTEC, INC.,

Defendants.

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FEUERSTEIN, J.

Before the Court are objections by plaintiff John J. Petito (plaintiff) to a Report and Recommendation of United States Magistrate Judge Arlene R. Lindsay dated March 7, 2007 recommending that the motion of defendants Phillip D. Hill, IRS Special Agent CID, Randall L. Sprance, IRS Special Agent CID, Lou Gossett, IRS CID Supervisor, David Masecca, ex-IRS Revenue Agent/Auditor, Melinda G. William, Esq., IRS attorney, Ronald Buch, Esq., IRS attorney, Richard Goldman, Esq., IRS attorney, Stephen King, Esq., Assistant U.S. Attorney, Theresa G. McQueeney, Esq., IRS Attorney, Lewis J. Abrahams, Esq., IRS Associate Area Counsel, Richard W. Skillman, Esq., IRS Acting Chief Counsel, Kevin M. Brown, IRS Division Counsel, Linda R. Dettery, IRS Area Counsel, Peggy Gartenbaum, IRS Acting Associate Area Counsel, Monica E. Koch, Esq., IRS Attorney, Stuart

Brown, Esq., IRS Chief Counsel, Andrew J. Mandell, IRS Acting Assistant Chief Counsel, John Williams, Jr., IRS Chief Counsel, Joseph F. Maselli, IRS Regional Counsel, Jody Tancer, IRS Acting District Counsel, John Ashcroft, former U.S. Attorney General, Roslynn R. Mauskopf, U.S. Attorney of E.D.N.Y., Janet Reno, former U.S. Attorney General, John W. Snow, Secretary of the Treasury, Paul H. O'Neill, former Secretary of the Treasury, Lawrence H. Summers, former Secretary of the Treasury, Robert E. Rubin, former Secretary of the Treasury, Mark W. Everson, Commissioner of IRS, Charles O. Rossotti, former Commissioner of IRS, Internal Revenue Service, United States Department of Treasury, United States Department of Justice, Office of the United States Attorney General, Office of the United States Attorney General Eastern District of New York, and United States of America (collectively, the "federal defendants"), to dismiss the complaint as against them be granted. For the reasons stated herein, the Report and Recommendation is accepted in its entirety and the complaint is dismissed as against the federal defendants.

I. Discussion

A. Standard of Review

Rule 72 of the Federal Rules of Civil Procedure permits magistrate judges to conduct proceedings on dispositive pretrial matters without the consent of the parties. Fed.R.Civ.P. 72(b). Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). Whether or not proper objections have been filed, the district judge may, after review, accept,

reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

B. Plaintiff's Objections

Plaintiff alleges, *inter alia*, that Magistrate Judge Lindsay based her findings and recommendations on a “wrong set of facts” caused by the consolidation of two of plaintiff’s unrelated cases (Plaintiff’s Objections, p. 3), and erred in finding (1) that this Court lacked subject matter jurisdiction; (2) that his claims under 26 U.S.C. § 7433 and 7433A were time-barred; and (3) that this Court lacked personal jurisdiction over the individual federal defendants. In addition, plaintiff challenges the ten (10) day statutory time frame prescribed for the filing of objections to a report and recommendation of a magistrate judge, see 28 U.S.C. § 636 (b)(1); Red. R. Civ. P. 72, and requests a “special hearing” during which he can assert further objections to the report and recommendation.

Upon *de novo* review of the Report and Recommendation, and upon careful consideration of plaintiff’s objections, plaintiff’s request for a “special hearing” is denied, the objections are overruled, the Report and Recommendation is accepted in its entirety and the complaint is dismissed as against the federal defendants. There being no just reason for delay, particularly since the claims against the remaining defendants are unrelated to the claims against the federal defendants, the clerk of the Court is directed to enter judgment in favor of the federal defendants and against plaintiff and to sever the claims against the remaining defendants. See, Fed. R. Civ. P. 54(b). The caption of this case should be amended in accordance with this Order.

SO ORDERED.

S/sjf

SANDRA J. FEUERSTEIN

United States District Judge

Dated: March 26, 2007
Central Islip, New York

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